



OFFICE OF THE ATTORNEY GENERAL OF TEXAS  
AUSTIN

GERALD C. MANN  
ATTORNEY GENERAL

Honorable C. O. Murdoch  
County Attorney  
Menard County  
Menard, Texas

Dear Sir:

Opinion No. O-3021

Re: May a county judge proceed with official duties, such as swearing in new officers, and approving of officers' bonds, after he has taken the oath of office and after he has executed his bond, but before he has had his bond approved by the commissioners' court?

Your recent request for an opinion of this department upon the above stated question has been received.

We quote from your letter as follows:

"I should like to have your opinion on a question that has come up since the inauguration of the present administration of the County government, of which I am a part.

"May a County Judge proceed with official duties, such as swearing new officers, and approving officers' bonds, after he has taken oath of office and after he has executed his bond but before he has had his bond approved by the Commissioners Court?

"This question has been raised by the outgoing County Judge, and it is my opinion that the provision in respect to having the bond of

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the County Judge approved is directory and not mandatory, and that the County Judge may begin official duties under the conditions set forth above, providing that his bond is approved on the day his term begins by the new Commissioners Court. I base my opinion upon the statute, largely, Article 1928, Civ. Statutes, Vol. 4, page 422, which reads as follows:

\* \* \*

"Please give me your opinion at your earliest convenience; if it is contrary to mine, there may be a rather complicated situation existing here; and I may have to requalify, for I was sworn in by our new county judge; and I understand that one of the commissioners was sworn in and had his bond approved by the new county judge, and then he served to approve the bond of the new county judge."

For the purposes of this opinion, we are not passing upon the question of whether or not the official bond of the county judge must be approved by the commissioners' court before he is qualified as county judge, but under the facts stated above, the officer in question (County Judge) was at least an officer de facto. An officer de facto has been broadly defined as one who has the reputation of being the officer he assumes to be, also as one who, under color of right, enters into the possession of an office and exercises the functions thereof, or who exercises the duties of the office under the color of a known and valid appointment or election, but fails to conform to some precedent requirement or condition, as to take an oath, give a bond, or the like. Numerous other definitions similar in import, are to be found in the books, (Kugle v. Glenrose Independent School District, 50 S. W. (2d) 375; Martin v. Grandview Independent School District, 266 S. W. 607).

Insofar as third persons are concerned, the rights and liabilities of the de facto officer are the same as those of an officer de jure. (Texas Jurisprudence, Vol. 34, p. 626, and authorities cited therein.)

The official acts of a de facto officer are valid

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so far as the public or third persons are concerned, and their validity may not be collaterally questioned. (Texas Juris., Vol. 34, p. 629, and authorities cited therein).

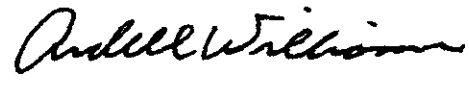
In view of the foregoing authorities and under the above stated facts, your question is respectfully answered in the affirmative.

Trusting that the foregoing fully answers your inquiry, we are

Yours very truly

ATTORNEY GENERAL OF TEXAS

By



Ardell Williams  
Assistant

AW:RS

APPROVED JAN 14, 1941



ATTORNEY GENERAL OF TEXAS

